ASARCO, INC., ET AL.

IBLA 81-802, 81-804, 81-805; 81-806; 81-807 — Decided May 6, 1982

Appeals from decisions of the Arizona State Director, Bureau of Land Management, denying in substantial part the protests of wilderness study area designations. 8500 (931).

Reversed in part; remanded in part; affirmed in part.

1. Federal Land Policy and Management Act of 1976: Wilderness -- Wilderness Act

   BLM does not violate the terms of sec. 603(a), Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1782 (1976), directing the Secretary to review those roadless areas of 5,000 acres or more of the public lands, identified during the inventory required by sec. 201(a) as having wilderness characteristics, where BLM undertakes a review of the public lands for wilderness characteristics prior to a multi-resource inventory of the public lands.

2. Federal Land Policy and Management Act of 1976: Wilderness -- Wilderness Act

   BLM's practice of designating lands occupied by roads or other intrusions as non-wilderness corridors (cherrystems), thereby excluding such lands from wilderness review and permitting adjacent lands, otherwise possessing wilderness characteristics, to be studied for their uses, values, and resources, is not an unlawful practice or contrary to any established Department policy.

3. Federal Land Policy and Management Act of 1976: Wilderness -- Wilderness Act -- Words and Phrases

"Roadless." H.R. Rep. No. 94-1163, 94th Cong., 2d Sess. 17 (1976), provides a definition of "roadless" adopted by the Bureau of Land Management in its Wilderness Inventory Handbook. The word "roadless" refers to the absence of roads which have been improved and maintained by mechanical means to insure relatively regular and continuous use. A way maintained solely by the passage of vehicles does not constitute a road.

4. Federal Land Policy and Management Act of 1976: Wilderness -- Wilderness Act

Where the record evidences BLM's first-hand knowledge of the lands within an inventory unit and contains comments from the public as to the area's fitness for wilderness preservation, BLM's subjective judgments of the area's naturalness qualities are entitled to considerable deference.

5. Federal Land Policy and Management Act of 1976: Wilderness -- Wilderness Act

An inventory unit must qualify as having wilderness characteristics without considering rehabilitation potential, i.e., rehabilitation should not be the basis for concluding that wilderness values exist in a unit. Rehabilitation potential should be considered only for those imprints of man that exist within a unit but are not so significant as to automatically disqualify the unit or portion of a unit.

6. Federal Land Policy and Management Act of 1976: Wilderness -- Wilderness Act

Where the record evidences BLM's first-hand knowledge of the lands within an inventory unit and contains comments from the public as to the area's fitness for wilderness preservation, BLM's subjective judgments as to whether an inventory unit

possesses outstanding opportunities for solitude or a primitive and unconfined type of recreation are entitled to considerable deference.

7. Federal Land Policy and Management Act of 1976: Inventory and Identification -- Federal Land Policy and Management Act of 1976: Wilderness -- Wilderness Act

While the Bureau of Land Management may inventory and identify areas of the public lands of less than 5,000 acres as having wilderness characteristics, it may not properly designate such areas as wilderness study areas under sec. 603(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1782(a) (1976), because that section only mandates review of roadless areas of 5,000 acres or more and roadless islands of the public lands. However, such areas may be managed under the general management authority of sec. 302, 43 U.S.C. § 1732 (1976), in a manner consistent with wilderness objectives, and such areas may also be recommended for wilderness designation.

APPEARANCES: Robert B. Crist, Graham M. Clark, Jr., Esq., Tucson, Arizona, for ASARCO, Inc.; Jerry L. Haggard, Esq., Phoenix, Arizona, for Western Nuclear, Inc., and Energy Fuels Exploration Co., Phelps Dodge Corporation, and Cyprus Bagdad Copper Co.; Clinton J. Hansen, Esq., Phoenix, Arizona, for Arizona Mining Association; Dale Goble, Esq., Office of the Solicitor, Washington, D.C., for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE STUEBING

ASARCO, Inc., Western Nuclear, Inc., and Energy Fuels Exploration Company, Phelps Dodge Corporation, Arizona Mining Association, and Cyprus Bagdad Copper Company appeal from decisions of the Arizona State Director, Bureau of Land Management (BLM), dated March 12, 1981, denying in substantial part their protests of the designation of lands within Arizona as wilderness study areas (WSA's). A list of those lands designated as WSA's appeared in the Federal Register on November 7, 1980, at 45 FR 74066.

The State Director's action establishing WSA's was taken pursuant to section 603(a) of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1782 (1976). That section directs the Secretary to review those roadless areas of 5,000 acres or more and roadless islands of the public lands which were identified during the inventory required by section 201(a)

of the Act as having wilderness characteristics described in the Wilderness Act of September 3, 1964, 16 U.S.C. § 1131(c) (1976). Following review of an area or island, the Secretary shall from time to time report to the President his recommendation as to the suitability or nonsuitability of each such area or island for preservation as wilderness.

The wilderness characteristics alluded to in section 603(a) are defined in section 2(c) of the Wilderness Act, 16 U.S.C. § 1131(c) (1976):

> A wilderness, in contrast with those areas where man and his own works dominate the landscape, is hereby recognized as an area where the earth and its community of life are untrammeled by man, where man himself is a visitor who does not remain. An area of wilderness is further defined to mean in this chapter an area of undeveloped Federal land retaining its primeval character and influence, without permanent improvements or human habitation, which is protected and managed so as to preserve its natural conditions and which (1) generally appears to have been affected primarily by the forces of nature, with the imprint of man's work substantially unnoticeable; (2) has outstanding opportunities for solitude or a primitive and unconfined type of recreation; (3) has at least five thousand acres of land or is of sufficient size as to make practicable its preservation and use in an unimpaired condition; and (4) may also contain ecological, geological, or other features of scientific, educational, scenic, or historical value.

The review process undertaken by the State Office pursuant to section 603(a) has been divided into three phases by BLM: Inventory, study, and reporting. The State Director's announcement on November 7, 1980, of those areas designated as WSA's marks the end of the inventory phase of the review process and the beginning of the study phase.

Although appellants do not each appeal the identical WSA designations, the arguments advanced by each on appeal are of sufficient similarity to permit our consolidation of these five cases. 1/ These arguments are:

1. The "wilderness-only" inventory conducted by BLM violates the statutory mandate of FLPMA for a comprehensive multi-resource inventory and is contrary to national policy.

2. BLM's practice of eliminating nonwilderness corridors (cherrystems) from an inventory unit is contrary to section 603(a).

3. Vehicle routes satisfying BLM's "road" definition exist within the WSA's and disqualify such areas from further study.

4. The WSA's contain significant imprints of man and do not otherwise possess wilderness characteristics.

1/ The WSA's on appeal are set forth in the Appendix.

5. The management restrictions set forth in the Department's Interim Management Plan Policy do not comply with section 603, congressional intent, or national policy.

We shall address each argument in order.

[1] The "wilderness-only" inventory mentioned by appellants refers to the inventory undertaken by BLM to identify those roadless areas of the public lands of 5,000 acres or more possessing wilderness characteristics. Appellants charge that BLM acted contrary to section 201 of FLPMA by limiting its inventory to wilderness values. That section directs the Secretary to "prepare and maintain on a continuing basis an inventory of all public lands and their resource and other values." 43 U.S.C. § 1711 (1976). Appellants interpret section 201(a) to require a multi-resource inventory prior to any wilderness review of the same lands. The result of BLM's "wilderness-only" inventory, in appellants' view, has been to designate lands as WSA's in ignorance of the resources therein and to lock up these lands for an unlimited period of time under BLM's Interim Management Policy.

Counsel for BLM maintains that the Secretary acted within his discretion in limiting his initial inventory efforts to wilderness values. This conclusion was a reasonable one, counsel argues, because a multi-resource inventory of the public lands would require several years, during which time all lands would remain under the nonimpairment standard of section 603(c). This standard would remain in effect until the lands were determined to lack wilderness characteristics or were released from WSA status. In counsel's view, therefore, the Secretary's action limiting the inventory initially to wilderness values relieved as much land as possible from the restrictions of section 603(c) in as short a time as possible. By counsel's estimate, the Secretary's policy has allowed some 149,368,000 acres (86 percent of the total) to be released to full, multiple use management.

Appellants' argument echoes that of the Cotter Corporation in Utah v. Andrus, 486 F. Supp. 995 (D. Utah 1979). Therein at 1,003, Judge Anderson addressed the merits of this argument:

> Cotter contends that BLM must take all potential values into account when it designates an area as a WSA. The statute, however, envisions a dynamic process, not a static one-time-only decision. FLPMA is addressed in part to solving the problem of the lack of a comprehensive plan for the use, preservation and disposal of public lands. The purpose of the inventory and the wilderness review is to enable BLM to ascertain the character of the lands within its jurisdiction, and the best use to which particular portions of land can be put -- given such things as wilderness characteristics, mineral values, and the nation's needs for recreation, energy, etc. BLM is entitled to address this problem one step at a time. [Citations omitted; emphasis in original.]
>
> * * * BLM is not required to immediately balance the mineral values against the wilderness values of a particular piece of land prior to designating the land a WSA. BLM may, consistent

> with FLPMA, look first at potential wilderness characteristics and then proceed to study the area for all its potential uses prior to formulating its final recommendations to the Executive. [Emphasis added.]

In Petroleum, Inc., 61 IBLA 139 (1982), this Board reached a result consistent with that of Judge Anderson. Therein at 142, we noted that the concern of appellant that the Secretary have comprehensive and balanced information regarding the various values of the WSA will be met during the study phase of the review process. During this phase, BLM will consider all values, resources, and uses of the lands considered for wilderness preservation. This same statement is equally appropriate in the instant appeals. No argument presented by appellants in their statement of reasons compels a different result.

[2] Appellants' second argument on appeal charges that BLM has designated lands as WSA's that are not roadless. The focus of this argument is BLM's cherrystemming practice whereby BLM designates as nonwilderness corridors (cherrystems) lands occupied by roads or other intrusions that would seemingly disqualify a parcel from wilderness consideration. The boundaries of an inventory unit containing a cherrystem are drawn around an intrusion by BLM so as to exclude it from the area being considered for wilderness values.

In National Outdoor Coalition, 59 IBLA 291, 296 (1981), we held that BLM did not act contrary to law or any established Department policy in recognizing nonwilderness corridors occupied by roads or other manmade intrusions. Though the boundaries of a WSA "containing" a nonwilderness corridor might be irregular as a result of such corridors, we agreed with BLM that section 603(a) did not specify any particular shape for an area that may eventually be recommended for wilderness preservation. This decision has been followed in several subsequent cases, none of which are materially different from the cases on appeal. See, e.g., State of Nevada, 62 IBLA 153 (1982), and C & K Petroleum Co., 59 IBLA 301 (1981). The State Director's response approving the practice of cherrystemming is, accordingly, affirmed.

[3] Appellants express considerable opposition to BLM's characterization of certain vehicle routes within the WSA's as ways rather than roads. The opposition raised by appellants calls for a close examination of the definition of a "road" used by BLM in its field work. That definition, set forth in H.R. Rep. No. 1163, 94th Cong., 2d Sess. 17 (1976), also appears in BLM's Wilderness Inventory Handbook (WIH) at 5: "The word 'roadless' refers to the absence of roads which have been improved and maintained by mechanical means to insure relatively regular and continuous use. A way maintained solely by the passage of vehicles does not constitute a road."

Appellants rely upon Organic Act Directive (OAD) 78-61, Change 2 (June 28, 1979), for the proposition that a route qualifies as a "road" so long as the route was improved at one time with tools to insure relatively regular and continuous use. Such an interpretation, we feel, is misleading. OAD 78-61 does nothing to remove the requirement that a vehicle route, once improved by mechanical means, must receive maintenance by mechanical means as needed in order to qualify as a road. What the OAD does say, however, is

that a route, having been mechanically improved, may be regarded as a road if mechanical maintenance has not yet been necessary. Improvements and relatively regular and continuous use would be an indication that the road would be maintained if the need were to arise. OAD at 4. Appellants do not establish error in BLM's methods by pointing to WSA's where evidence of the use of tools is found. Similarly, appellants do not establish error by alleging mechanical improvement and mechanical maintenance in the past if mechanical maintenance has not been made for some time. The contention that a route is in fact a road must be supported by proof of mechanical improvement and mechanical maintenance, inter alia. See Conoco, Inc., 61 IBLA 23, 30 (1981). If mechanical maintenance is unnecessary because of the stability of the soil or other reasons, that fact must be alleged and proved. No such allegation appears in appellants' statements of reasons. See Sierra Club, 62 IBLA 367, 369-70 (1982).

The "road" definition that BLM uses in its field work applies also to routes of travel within a wash. Appellants' argument that a route located within a wash subject to annual runoffs should be presumed to be improved finds no support in FLPMA, the WIH, or the OAD's. The further contention that BLM's requirement of mechanical maintenance is artificial or irrelevant because nonmechanically maintained routes may be equally visible or well-travelled overlooks the fact that BLM may eliminate such routes as substantially noticeable imprints of man.

[4] Appellants' fourth argument on appeal is the contention that the WSA's contain significant intrusions of man and otherwise lack wilderness characteristics. Though these allegations are repeated for virtually every WSA on appeal, appellants' statements of reasons do not point to specific intrusions or inholdings which appellants believe that State Director overlooked or improperly considered in his protest response. In the absence of specific allegations or error, our review of the record, consisting of some 16 cartons of documents, is necessarily limited to the issues of law or policy advanced by appellants.

Appellants' allegations of intrusions or imprints of man within the WSA's do not by themselves establish error in the State Director's protest response. In setting forth the definition of wilderness, quoted above, Congress did not require that a wilderness area be free of all imprints of man. Instead, Congress required that an area generally appear to have been affected primarily by the forces of nature, with the imprint of man's work substantially unnoticeable. Indeed, in H.R. Rep. No. 95-540, 94th Cong., 2d Sess. 6 (1977), a report prepared to accompany H.R. 3454, 2/ there are listed several examples of intrusions which may be allowed in a designated wilderness area. Among these are trails, trail signs, bridges, fire towers, firebreaks, fire suppression facilities, pit toilets, fisheries enhancement facilities, fire rings, hitching posts, snow gauges, water quantity and quality measuring devices, and other scientific devices. Based on this guidance, BLM has set forth in its WIH examples of intrusions found on the

2/ This bill was later enacted as the Endangered American Wilderness Act, 16 U.S.C. § 1132 (Supp. II 1978).

public lands which, it finds, may be present within a WSA. These additional items include research monitoring markers and devices, wildlife enhancement facilities, radio repeater sites, air quality monitoring devices, fencing, and spring development.

As there is apparently no question that the lands contain imprints of man, appellants' objections to such imprints reduce to a disagreement with BLM as to whether such imprints are substantially noticeable. This question, of course, calls for a highly subjective determination by BLM. In Conoco, Inc., supra, we held that BLM's subjective judgment as to an area's naturalness qualities was entitled to considerable deference by this Board. We believe a similar holding is appropriate in the instant appeals. Inventory case files assembled by BLM evidence its firsthand knowledge of the lands at issue. In addition, BLM has received the benefit of numerous comments from individuals and groups of wide ranging interests. BLM's expertise and familiarity with the units on the ground entitle it, we believe, to our considerable deference in such subjective determinations. Appellants' views to the contrary, while not unreasonable, do not undermine this deference. The request by appellants for appointment of an Administrative Law Judge to further inquire into these issues is denied.

Whether BLM may consider during the inventory imprints of man outside WSA boundaries is a related issue raised by appellants. Sights and sounds of man's imprint, whether located just beyond the perimeter of a WSA or in an inholding within, are generally considered during the study phase of wilderness review. Such sights and sounds technically emanate from land outside the WSA and are treated by BLM as so occurring. OAD 78-61, Change 2 at 3. BLM's practice is to assess the imprints of man outside unit boundaries during the inventory stage only in situations where the imprint is adjacent to the unit and its impact is so extremely imposing that it cannot be ignored, and if not considered, reasonable application of inventory guidelines would be questioned. OAD 78-61, Change 3 at 4. On the basis of appellants' submissions on appeal, we perceive no abuse of this policy by BLM.

[5] Appellants further maintain that BLM incorrectly considered the rehabilitation potential of impacted lands in designating such lands as WSA's. Though this charge is made as to all units on appeal, our examination of the case files indicates that it is applicable to only a limited number of units.

The WIH and OAD 78-61, Change 3, appear to be inconsistent with one another on the issue of rehabilitation. At page 14, the WIH provides support for the rehabilitation of a substantially noticeable impact:

> An inventory unit or portion of an inventory unit in which the imprint of man's work is substantially noticeable, but which otherwise contains wilderness characteristics, may be further considered for designation as a Wilderness Study Area when it is reasonable to expect the imprint of man's work to return or be returned to a substantially unnoticeable level either by natural processes or by hand labor. An example could be an abandoned railroad bed. [Emphasis in original.]

This support appears to have been withdrawn, however, by the subsequent OAD:

> h. Rehabilitation potential. Page 14 of the WIH identified the possibility of considering certain areas in which existing imprints of man could be rehabilitated through either natural processes or hand labor. Consideration may be given to rehabilitation potential only under the following conditions.
>
> (1) An inventory unit must qualify as having wilderness characteristics without considering rehabilitation potential. In other words, rehabilitation potential should not be the basis for concluding that wilderness values exist in a unit. The intent is not to create wilderness where it does not exist.
>
> (2) Rehabilitation potential should be considered only for those imprints of man that exist within a unit but are not so significant as to automatically disqualify the unit or portion of a unit.
>
> (3) Rehabilitation potential should be considered only in rare and extreme cases.
>
> (4) For rehabilitation potential to enter into the decision, it must be documented that rehabilitation through hand tools and/or natural processes is feasible in light of the magnitude of the area and technical, physical, scientific, and budgetary factors. It must also be documented that either enough is known about rehabilitation potential of a given situation to reasonably predict its success or that natural rehabilitation has been established to the point where rehabilitation is certain. [Emphasis in original.]

This subsequent OAD expresses the current BLM policy on the subject. Our examination of the files shows that BLM frequently considered the rehabilitation potential of manmade imprints that it found to be substantially unnoticeable. No error occurs in these situations, we believe, because such lands were found to possess wilderness characteristics independent of whatever rehabilitation may occur. In unit AZ-050-023A/B, however, BLM's narrative summary openly acknowledges that past mining operations have left a "substantially noticeable impact on an area covering approximately 80 acres." Despite such impact, this 80-acre area was allowed to remain in the WSA because of its favorable rehabilitation potential. In unit AZ-020-028/029, mining imprints described as "significant" by BLM were allowed to remain in the WSA for a similar reason. We hereby remand the case files of these two units to BLM to reconsider its actions in the light of OAD 78-61, Change 3. If BLM shall find that such impacts are not so significant as to be automatically disqualifying, it shall supplement the narrative summaries appropriately setting forth the reasons for its conclusions. If BLM shall find that such impacts are so significant as to be automatically disqualifying, it

shall modify the boundaries of the unit to exclude such impacted lands. 3/ Assuming that such modifications do not reduce the acreage of the WSA's to less than 5,000 acres, infra, these WSA's, as modified, may be further studied for wilderness preservation.

[6] Though appellants have heretofore focused on the naturalness characteristics of the WSA's, they also find error in BLM's application of the outstanding opportunity criterion. In designating each of the units on appeal as a WSA, BLM was required to find that each unit possessed outstanding opportunities for either solitude or a primitive and unconfined type of recreation. 16 U.S.C. § 1131(c) (1976). Appellants contend that BLM mis-applied this standard in reliance on OAD 78-61, Change 3. This directive requires BLM to avoid comparisons of units in assessing whether outstanding opportunities for solitude or a primitive and unconfined type of recreation exist. In appellants' view, comparisons of the WSA's with other lands, whether administered by BLM or not, is necessary, so that only lands with truly outstanding opportunities are designated as WSA's.

We agree with appellants that comparisons are necessary, but find no error in BLM's inventory process. We reach this conclusion, because there is implicit in the inventory process a comparison by virtue of the fact that BLM is required to identify lands with outstanding opportunities. The WIH, authored by BLM, defines the term "outstanding" in this way: "Standing out among others of its kind; conspicuous, prominent; 2. superior to others of its kind; distinguished; excellent." WIH at 13, 15. There is no indication in the OAD's that this definition was intended to be modified.

In Committee for Idaho's High Desert, 62 IBLA 319, 326 (1982), the concurring opinion stated: "In order to attribute 'outstanding' opportunities, values, or characteristics to land, that land must be compared with other lands, as the term 'outstanding' is necessarily comparative in its concept." (Emphasis in original.) Commenting on this same issue, the Board held in Sierra Club, 61 IBLA 329, 334 (1982): "The ultimate question is not whether BLM employees flawlessly follow every direction contained in the WIH; rather, the real question is whether or not the BLM decision correctly applies the statutory criteria." We believe BLM's construction of the outstanding opportunity criterion, as set forth in its definition of the term "outstanding," to be a reasonable one and hold that the statutory criteria have been correctly applied.

3/ Three recent decisions of this Board have discussed rehabilitation potential to some extent without reference to OAD 78-61, Change 3. They are Don Coops, 61 IBLA 300 (1982); City of Colorado Springs, 61 IBLA 124 (1982); and Tri-County Cattlemen's Association, 60 IBLA 305 (1981). Insofar as any of these cases need to be distinguished, it does not appear that in any of them did appellants establish that the wilderness criterion of naturalness was lacking or that the imprint of man's work was so significant as to require automatic disqualification of the units, or portions thereof. Absent such a showing, BLM's consideration of their rehabilitation potential was not improper.

Appellants' remaining comments on the outstanding opportunity criterion are very general and amount to little more than simple disagreement with BLM's determination that the WSA's do in fact possess such opportunities. As we stated above in our discussion of naturalness characteristics, BLM's determination of the presence of outstanding opportunities calls for a highly subjective judgment on its part. Because of its expertise gained from its firsthand knowledge of the lands and the comments of interested persons, we believe that BLM's judgment is entitled to considerable deference. By this statement, we do not mean to imply that BLM's determination will be immune from review. To the contrary, BLM's documentation for its judgment will be carefully studied, as will the documentation of an appellant. An appellant will, however, have a particularly heavy burden to support a reversal of BLM's subjective conclusions. We cannot say that appellants have met this burden on the issue of the units' outstanding opportunities for solitude or a primitive and unconfined type of recreation. Conoco, Inc., supra at 28.

Appellants' final argument on appeal is the contention that the management restrictions set forth in the Interim Management Policy (IMP) do not comply with section 603, congressional intent, or national policy. While appellants' argument may be of interest in the future, they allege no facts which would evidence an ongoing controversy and thus allow the Board to consider this argument in a concrete, factual setting. Moreover, the right to protest the State Director's WSA's designations was granted to provide a forum for those persons objecting to BLM's finding that the WSA's possessed the requisite size, naturalness, and outstanding opportunities. Appellants' arguments are outside the scope of this grant and must await a future adverse application of the IMP to a proposed action of appellants.

[7] Our examination of the inventory files indicates that units whose area is less than 5,000 acres have been designated as WSA's. 4/ The Secretary's authority to review roadless areas for wilderness characteristics under section 603(a) is, however, limited to roadless areas of 5,000 acres or more and roadless islands of the public lands. 43 U.S.C. § 1782 (1976). Although we acknowledge that section 2(c) of the Wilderness Act of 1964, supra, requires a wilderness area to have "at least five thousand acres or [be] of sufficient size as to make practicable its preservation and use in an unimpaired condition," the Secretary's review authority under section 603(a) is not coextensive with this language from section 2(c). Our holding to this effect is set forth in Tri-County Cattlemen's Association, supra.

In Tri-County, this Board examined in some detail the legislative history of section 603 and found that the authority to designate an inventory unit as a WSA is derived from section 603(a). That section directs the Secretary to review only those areas of 5,000 acres or more. Thus, we concluded that section 603(a) established a minimum acreage requirement for WSA's. Id. at 312.

4/ Those units under appeal whose area is less than 5,000 acres are: AZ-010-006B, AZ-010-006C, AZ-010-006D, AZ-010-096A, AZ-010-099; AZ-020-007, AZ-020-014, AZ-020-021, AZ-020-068, AZ-020-084A, AZ-020-197, AZ-020-203B; AZ-040-076, AZ-040-077; AZ-050-005B, AZ-050-023A, AZ-050-031, and AZ-050-033.

The impact of Tri-County on the instant case is to reverse the State Director's WSA designation pursuant to section 603(a) of any parcel under 5,000 acres in area. This holding is made despite the fact that these parcels may be contiguous with proposed wilderness lands of other Interior agencies or the subject of strong public support. As Tri-County points out, however, BLM has the authority to pursue wilderness review of these areas under other provisions of FLPMA, specifically, 43 U.S.C. §§ 1712 and 1732 (1976). The nonimpairment standard set forth in section 603(c) would not apply to such an area under 5,000 acres. See also Don Coops, 61 IBLA 300, 305-06 (1982), and Save the Glades Committee, 54 IBLA 215 (1981).

To summarize our multiple holdings in these cases, the State Director's decisions with respect to those WSA's under 5,000 acres in area are reversed; case files AZ-020-028/029 and AZ-050-023A/B are remanded for action consistent herewith; and the State Director's decisions for the remainder of the units on appeal are affirmed.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decisions of the State Director are reversed in part, remanded in part, and affirmed in part.

Edward W. Stuebing
Administrative Judge

We concur:

Anne Poindexter Lewis
Administrative Judge

Gail M. Frazier
Administrative Judge

APPENDIX

IBLA 81-802 - ASARCO, Inc. *

AZ-020-071	AZ-020-187
AZ-020-075	AZ-020-194
AZ-020-100	AZ-020-197

IBLA 81-804 - Western Nuclear, Inc., and Energy Fuels Exploration Company.

AZ-010-031	AZ-010-097
AZ-010-033A	AZ-010-104A
AZ-010-034	AZ-010-104B
AZ-010-093	AZ-010-105A **
AZ-010-096A	AZ-010-109 **
AZ-010-096C	AZ-010-111
AZ-010-096D	AZ-010-112 **

IBLA 81-805 - Phelps Dodge Corporation

AZ-040-014	AZ-040-048
AZ-040-016	AZ-040-060
AZ-040-022/023/024A	AZ-040-065
AZ-040-022/023/024B	AZ-040-076
	AZ-040-077

IBLA 81-806 - Arizona Mining Association

AZ-010-008A/19	AZ-010-096C
AZ-010-008B	AZ-010-096D
AZ-010-009	AZ-010-097
AZ-010-031	AZ-010-099
AZ-010-033A	AZ-010-104A
AZ-010-034A	AZ-010-104B

* Though ASARCO's statement of reasons includes a discussion of unit AZ-040-001A, there is no mention of this unit in either its protest or notice of appeal. This unit, therefore, is not considered in this appeal.

** The appeals of Western Nuclear, Inc., and Energy Fuels Corporation as to units AZ-010-105A, AZ-010-109, AZ-010-112 are hereby dismissed for appellants' failure to timely submit their protest. By an announcement appearing in the Federal Register, 45 FR 11919 (Feb. 22, 1980), the Acting State Director specified that all protests of accelerated inventory units, such as these, must be filed no later than Mar. 26, 1980. Appellants' protest of these units is dated Dec. 30, 1980, well after the deadline. Had appellants appealed the WSA designation of unit AZ-010-119, as appears to have been their intention, a similar dismissal for untimeliness would be in order.

IBLA 81-806 - Arizona Mining Association (continued)

AZ-010-041	AZ-010-106A ***
AZ-010-050	AZ-010-106B ***
AZ-010-051	AZ-010-106C ***
AZ-010-052	AZ-010-106D ***
AZ-010-091	AZ-010-111
AZ-010-093	AZ-010-132
AZ-010-096A	AZ-010-136
AZ-020-001A	AZ-020-119
AZ-020-007	AZ-020-125
AZ-020-008	AZ-020-126A
AZ-020-009	AZ-020-136
AZ-020-010	AZ-020-138
AZ-020-012/042	AZ-020-142/144
AZ-020-014	AZ-020-157
AZ-020-015	AZ-020-160
AZ-020-021	AZ-020-163
AZ-020-024	AZ-020-164
AZ-020-028/029	AZ-020-172
AZ-020-068	AZ-020-176
AZ-020-071	AZ-020-187
AZ-020-075	AZ-020-194
AZ-020-083	AZ-020-197
AZ-020-084A	AZ-020-202
AZ-020-099	AZ-020-203B
AZ-020-100	AZ-020-204
	AZ-020-205
AZ-040-001A	AZ-020-005B
AZ-040-008	AZ-050-007C/5-48/2-52
	AZ-050-012
AZ-040-014	AZ-050-013
AZ-040-016	AZ-050-014A/B
AZ-040-022/023/024A	AZ-050-015A
AZ-040-022/023/024B	AZ-050-017
AZ-040-048	AZ-050-023A
AZ-040-060	AZ-050-023B
AZ-040-065	AZ-050-031
AZ-040-076	AZ-050-033
AZ-040-077	AZ-050-034

IBLA 81-807 - Cyprus Bagdad Copper Co.

AZ-020-068	AZ-050-012
AZ-020-071	AZ-050-013

*** An amended notice of appeal has been filed by the Arizona Mining Association to substitute units AZ-010-006A, AZ-010-006B, AZ-010-006C, and AZ-010-006D for units AZ-010-106A, AZ-010-106B, AZ-010-106C, and AZ-010-106D on appeal. Because this amended notice merely corrects what appears to be clerical errors, we will permit this substitution to be made.

IBLA 81-807 - Cyprus Bagdad Copper Co. (continued)

AZ-020-075
AZ-020-204
AZ-020-205
AZ-050-014
AZ-050-017
AZ-050-050 ****
AZ-050-076/5-48/5-52 ****

**** These units appear to be the product of further clerical errors; units AZ-050-015 and AZ-050-007C/5-48/2-52 were undoubtedly intended.